



**HAZARDOUS SUBSTANCES  
TAX LAW  
REVENUE AND TAXATION CODE  
AND REGULATIONS**



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HAZARDOUS SUBSTANCES TAX LAW  
Revenue and Taxation Code

## HAZARDOUS SUBSTANCES TAX LAW

(Part 22, Division 2, Revenue and Taxation Code \*)

Enacted Statutes 1981, Chapter 756. Amended by Statutes 1982, Chapters 5 (First Extra Session), 496, 1244, 1252, and 1589; Statutes 1983, Chapter 1155; Statutes 1984, Chapters 930, 1020, and 1707.

- Chapter 1. General Provisions and Definitions. §§ 43001–43013.
- 2. The Hazardous Substances Tax. §§ 43051–43102.
- 3. Determinations. §§ 43151–43352.
- 4. Collection of Tax. §§ 43401–43448.5.
- 5. Overpayments and Refunds. §§ 43451–43491.
- 6. Administration. §§ 43501–43527.
- 7. Disposition of Proceeds. §§ 43551–43555.
- 8. Violations. §§ 43602–43607.
- 9. Disclosure of Information. § 43651.

### CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 43001. Title.
- § 43002. Definitions.
- § 43002.3. Nonhazardous waste; determination by State Department of Toxic Substances Control.
- § 43003. Construction.
- § 43004. Provisions; construction.
- § 43005. Actions or proceedings prior to enactment.
- § 43005.5. Penalty; exception.
- § 43006. “Person.”
- § 43007. “Board.”
- § 43008. “Fee.” [Repealed.]
- § 43008. “Fee.”
- § 43008.1. Surcharge.
- § 43009. “In this state.”
- § 43010. “Department.”
- § 43010.1. “Department” for Sections 43056 and 43057.
- § 43011. “Director.”
- § 43011.1. “Director” for Sections 43056 and 43057.
- § 43012. “Taxpayer.”
- § 43013. “Feepayer.”

**43001. Title.** This part shall be known and may be cited as the Hazardous Substances Tax Law.

**43002. Definitions.** The collection and administration of the fees and taxes imposed by Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300), respectively, of Division 20 of the Health and Safety Code, shall be governed by the definitions in those provisions, unless expressly superseded by the definitions contained in this part.

History.—Stats. 1982, Ch. 496, in effect July 12, 1982, added “and administration” after “collection,” and substituted “fees and taxes referred to in” for “tax imposed by” before “Sections.” Stats. 1988, Ch. 1376, in effect September 26, 1988, substituted “imposed by” for “referred to in Sections 43051 and 43052 shall be governed by the definitions contained in”, and added “shall be governed by the definitions in those provisions,” before “unless expressly . . .”.

**43002.3. Nonhazardous waste; determination by State Department of Toxic Substances Control.** For purposes of the collection of the fees specified in subdivision (a) of Section 25174 and the fee imposed pursuant to

\* The provisions of this part, except as otherwise noted, became effective September 25, 1981.

Section 25174.1 of the Health and Safety Code, a determination by the Department of Toxic Substances Control that a waste is nonhazardous shall be effective only for wastes disposed of, or submitted for disposal, commencing with the month during which the Department of Toxic Substances Control receives a completed application for that determination.

History.—Added by Stats. 1982, Ch. 1244, in effect September 22, 1982. Stats. 1989, Ch. 269, in effect August 3, 1989, substituted “fees specified in subdivision (a) of” for “fee imposed pursuant to” and added “and the fee imposed pursuant to Section 25174.1” after “Section 25174” in subdivision (a). Stats. 1990, Ch. 1268, in effect September 25, 1990, but operative January 1, 1991, deleted “(a)” before “For purposes and subdivision (b)”. Stats. 1992, Ch. 852, in effect September 21, 1992, substituted “Department of Toxic Substances Control” for “State Department of Health Services”.

**43003. Construction.** Except where the context otherwise requires, the definitions contained in this chapter shall govern the construction of this part.

**43004. Provisions; construction.** The provisions of this part insofar as they are substantially the same as existing provisions of law relating to the same subject matter shall be construed as restatements and continuations and not as new enactments.

**43005. Actions or proceedings prior to enactment.** Any action or proceeding commenced before this part takes effect, or any right accrued, is not affected by this part, but all procedures taken shall conform to the provisions of this part as far as possible.

**43005.5. Penalty; exception.** The penalty provisions of Sections 43155 and 43201 shall not apply to the fees imposed pursuant to Section 25174 of the Health and Safety Code for those disposals which occurred prior to September 25, 1981.

History.—Added by Stats. 1982, Ch. 1252, in effect January 1, 1983.

**43006. “Person.”** “Person” means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. “Person” also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

History.—Stats. 1990, Ch. 1268, in effect September 25, 1990, but operative January 1, 1991, substituted “means an” for “includes any”, added “trust” before “firm”, added “joint stock company, business concern,”, deleted “cooperative organization, fraternal organization,”, added “including, but . . . any city,” deleted “estate, trust, business trust, receiver, trustee, syndicate, this state, any”, after “corporation”, deleted “municipality,” before “district”, and substituted “commission, the . . . by law.” for “public agency or subdivision of this state or any other group or combination acting as a unit.” Stats. 1994, Ch. 1200, in effect September 30, 1994, added “limited liability company,” after “partnership,” in the first sentence.

**43007. “Board.”** “Board” means the State Board of Equalization.

**43008. “Fee.”** [Repealed by Stats. 1982, Ch. 496, in effect July 12, 1982.]

43008. **“Fee.”** Any fee administered and collected by the board pursuant to this part is a tax for purposes of this part.

History.—Added by Stats. 1982, Ch. 496, in effect July 12, 1982. Stats. 1986, Ch. 1506, effective September 30, 1986, replaced “Any fee administered and collected by the board pursuant to this part” for “The fee imposed by Section 25174 of the Health and Safety Code.”

43008.1. **Surcharge.** Any surcharge administered and collected by the board pursuant to this part is considered a tax for purposes of this part.

History.—Added by Stats. 1990, Ch. 1267, in effect January 1, 1991.

43009. **“In this state.”** “In this state” means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

43010. **“Department.”** “Department” means the Department of Toxic Substances Control.

History.—Stats. 1992, Ch. 852, in effect September 21, 1992, substituted “Department of Toxic Substances Control” for “State Department of Health Services”.

43010.1. **“Department” for Sections 43056 and 43057.** Notwithstanding Section 43010, for purposes of the fees administered under Sections 43056 and 43057, “department” means the State Department of Health Services.

History.—Added by Stats. 1992, Ch. 852, in effect September 21, 1992. Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, substituted “fees administered under Sections 43056 and 43057” for “fee administered under Section 43056” after “purposes of the”.

43011. **“Director.”** “Director” means the Director of Toxic Substances Control.

History.—Stats. 1992, Ch. 852, in effect September 21, 1992, substituted “Department of Toxic Substances Control” for “State Department of Health Services” and deleted subsection (b).

43011.1. **“Director” for Sections 43056 and 43057.** Notwithstanding Section 43011, for purposes of the fees administered under Sections 43056 and 43057, “director” means the State Director of Health Services.

History.—Added by Stats. 1992, Ch. 852, in effect September 21, 1992. Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, substituted “fees administered under Sections 43056 and 43057” for “fee administered under Section 43056” after “purposes of the”.

43012. **“Taxpayer.”** For purposes of this part, “taxpayer” means any person liable for the payment of a fee or a tax specified in subdivision (a) of Section 25174 of the Health and Safety Code or subdivision (e) of Section 25221 of the Health and Safety Code, or imposed by Section 105310 or 25174.1 of the Health and Safety Code.

History.—Stats. 1982, Ch. 496, in effect July 12, 1982, added “For . . . part,” before “‘taxpayer,’” substituted “any” for “a” before “person,” added “a fee or” before “a tax,” and substituted “by Section . . . Code” for “pursuant to this part” after “imposed.” Stats. 1989, Ch. 269, in effect August 3, 1989, added “specified in subdivision (a) of Section 25174, or” after “fee or a tax” and substituted “25174.1” for “25174”. Stats. 1990, Ch. 1268, in effect September 25, 1990, but operative January 1, 1991, added “of the Health and Safety Code” after “25174” and deleted “or 25345” after “25174.1”. Stats. 1991, Ch. 1123, in effect October 14, 1991, added “or subdivision (e) of . . . Code” after “Code”. Stats. 1992, Ch. 852, in effect September 21, 1992, added “372.7 or” after “imposed by Section”. Stats. 1996, Ch. 1023, in effect September 29, 1996, substituted “105310” for “372.7” after “imposed by Section”.

43013. **“Feepayer.”** For purposes of this part, “feepayer” has the same meaning as taxpayer, as defined in Section 43012.

History.—Added by Stats. 1991, Ch. 1123, in effect October 14, 1991.

CHAPTER 2. THE HAZARDOUS SUBSTANCES TAX

- Article 1. Imposition of Tax. §§ 43051-43057.  
2. Registration and Security. §§ 43101-43102.

Article 1. Imposition of Tax

- § 43051. Administration and collection of fee.  
§ 43052. Administration and collection of taxes. [Repealed.]  
§ 43053. Fees.  
§ 43054. Fees.  
§ 43055. Surcharge administration. [Repealed.]  
§ 43055. Surcharge administration.  
§ 43056. Fees.  
§ 43057. Fees.

**43051. Administration and collection of fee.** The fee imposed pursuant to Section 25174.1 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

**History.**—Stats. 1982, Ch. 496, in effect July 12, 1982, deleted “The board . . . collect” before “The fee” and added “shall . . . part” after “Code.” Stats. 1989, Ch. 269, in effect August 3, 1989, substituted “25174.1” for “25174”.

**43052. Administration and collection of taxes.** [Repealed by Stats. 1990, Ch. 1268, in effect September 25, 1990, but operative January 1, 1991.]

*Text of section operative through June 30, 1998*

**43053. Fees.** The fees imposed pursuant to Sections 25205.2, 25205.5, 25205.6, 25205.7, 25205.8, 25205.14, and 25221 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

**History.**—Added by Stats. 1986, Ch. 1506, effective September 30, 1986. Stats. 1989, Ch. 269, in effect August 3, 1989, substituted a comma for “and” after “25205.2” and added “, 25205.6, 25205.7, 25205.8, and 25347.6” after “25205.5”, Stats. 1989, Ch. 1032, in effect September 29, 1989 added “and” after “25205.7,” and deleted “, and 25347.6” after “25205.8”. Stats. 1991, Ch. 1123, in effect October 14, 1991, deleted “and” after “25205.7”, added “and 25221” after “25205.7”. Stats. 1992, Ch. 1345, in effect January 1, 1993, added “25205.14” after “25205.8”.

*Text of section operative July 1, 1998*

**43053. Fees.** The fees imposed pursuant to Sections 25205.2, 25205.5, 25205.7, and 25205.14 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

**History.**—Added by Stats. 1986, Ch. 1506, effective September 30, 1986. Stats. 1989, Ch. 269, in effect August 3, 1989, substituted a comma for “and” after “25205.2” and added “, 25205.6, 25205.7, 25205.8, and 25347.6” after “25205.5”, Stats. 1989, Ch. 1032, in effect September 29, 1989 added “and” after “25205.7,” and deleted “, and 25347.6” after “25205.8”. Stats. 1991, Ch. 1123, in effect October 14, 1991, deleted “and” after “25205.7”, added “and 25221” after “25205.7”. Stats. 1992, Ch. 1345, in effect January 1, 1993, added “25205.14” after “25205.8”. Stats. 1997, Ch. 870 (SB 660), in effect January 1, 1998, but operative July 1, 1998, substituted “25205.7, and 25205.14” for “25205.6, 25205.7, 25205.8, 25205.14, and 25221” after “Sections 25205.2, 25205.5,”.

*Text of section operative through June 30, 1998*

**43054. Fees.** The fees imposed pursuant to Section 25343 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

**History.**—Added by Stats. 1989, Ch. 1032, in effect September 29, 1989. Stats. 1991, Ch. 1123, in effect October 14, 1991, substituted “25343” for “25347.6” after “Section”.

*Text of section operative July 1, 1998*

43054. **Fees.** The fees imposed pursuant to Section 25205.6 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

History.—Added by Stats. 1989, Ch. 1032, in effect September 29, 1989. Stats. 1991, Ch. 1123, in effect October 14, 1991, substituted "25343" for "25347.6" after "Section". Stats. 1997, Ch. 870 (SB 660), in effect January 1, 1998, but operative July 1, 1998, substituted "25205.6" for "25343" after "pursuant to Section".

43055. **Surcharge administration.** [Repealed by Stats. 1997, Ch. 870 (SB 660), in effect January 1, 1998, but operative July 1, 1998.]

43055. **Surcharge administration.** The surcharge imposed pursuant to Section 25205.9 of the Health and Safety Code, as that section read on December 31, 1997, and was repealed by Section 24 of Chapter 870 of the Statutes of 1997, shall be administered and collected by the board in accordance with this part, with regards to any amounts due and payable on or before February 28, 1998.

History.—Added by Stats. 1998, Ch. 882 (SB 2240), in effect January 1, 1999.

43056. **Fees.** The fee imposed pursuant to Section 105190 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

History.—Added by Stats. 1991, Ch. 798, in effect January 1, 1992. Stats. 1996, Ch. 720, in effect January 1, 1997, substituted "105190" for "429.14" after "pursuant to Section".

43057. **Fees.** The fee imposed pursuant to Section 105310 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

History.—Added by Stats. 1991, Ch. 799, in effect January 1, 1992. Stats. 1996, Ch. 1023, in effect September 29, 1996, substituted "105310" for "372.7" after "pursuant to Section".

Article 2. Registration and Security.

- § 43101. Registration. [Repealed.]
- § 43101. Registration.
- § 43102. Security.

43101. **Registration.** [Repealed by Stats. 1982, Ch. 496, in effect July 12, 1982.]

*Text of section operative through June 30, 1998*

43101. **Registration.** Every person, as defined in Section 25118 of the Health and Safety Code, who is subject to the fees specified in subdivision (a) of Section 25174 of the Health and Safety Code, Section 25174.1 of the Health and Safety Code, Section 105190 of the Health and Safety Code, Section 25205.14 of the Health and Safety Code, or subject to the surcharge imposed pursuant to Section 25205.9 of the Health and Safety Code shall register with the board on forms provided by the board.

History.—Added by Stats. 1982, Ch. 496, in effect July 12, 1982. Stats. 1986, Ch. 1506, effective September 30, 1986, inserted ", as defined in Section 25118 of the Health and Safety Code," after "person", substituted "is subject to fees imposed pursuant to Sections 25174, 25205.2, or 25205.5 of the Health and Safety Code" for "operates a facility for the disposal of hazardous wastes, disposes of hazardous wastes on premises owned or controlled by him or her, or submits hazardous wastes to others for disposal", and added "on forms provided by the board" after "register with the board". Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted "Section" for "Sections", deleted "or" before "25205.5", and added ", or 25345" after "25205.5". Stats. 1989, Ch. 269, in effect August 3, 1989, substituted "specified in subdivision (a) of" for "imposed pursuant to" after "subject to the fees" and "or imposed pursuant to Section 25174.1" for "or", 25205.2,

25205.5," after "25174". Stats. 1990, Ch. 1286, in effect September 25, 1990, but operative January 1, 1991, added "of the Health and Safety Code" after "25174", deleted "or 25345" after "25174.1", and added "or the surcharge . . . Safety Code". Stats. 1991, Ch. 798, in effect January 1, 1992, added "or Section 429.14 . . . Code" after "Code". Stats. 1992, Ch. 1345, in effect January 1, 1993, deleted "or imposed pursuant to" before "Section 25174.1", deleted "or" before "Section 429.14", added "Section 25205.14 . . . Code" after "429.14 of the Health and Safety Code", and added "subject to" before "surcharge imposed". Stats. 1996, Ch. 720, in effect January 1, 1997, substituted "105190" for "429.14" after "Safety Code, Section".

### *Text of section operative July 1, 1998*

**43101. Registration.** Every person, as defined in Section 25118 of the Health and Safety Code, who is subject to the fees specified in subdivision (a) of Section 25173.6 of the Health and Safety Code, subdivision (a) of Section 25174 of the Health and Safety Code, Section 105190 of the Health and Safety Code, or Section 25205.14 of the Health and Safety Code shall register with the board on forms provided by the board.

**History.**—Added by Stats. 1982, Ch. 496, in effect July 12, 1982. Stats. 1986, Ch. 1506, effective September 30, 1986, inserted ", as defined in Section 25118 of the Health and Safety Code," after "person", substituted "is subject to fees imposed pursuant to Sections 25174, 25205.2, or 25205.5 of the Health and Safety Code" for "operates a facility for the disposal of hazardous wastes, disposes of hazardous wastes on premises owned or controlled by him or her, or submits hazardous wastes to others for disposal", and added "on forms provided by the board" after "register with the board". Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted "Section" for "Sections", deleted "or" before "25205.5", and added ", or 25345" after "25205.5". Stats. 1989, Ch. 269, in effect August 3, 1989, substituted "specified in subdivision (a) of" for "imposed pursuant to" after "subject to the fees" and "or imposed pursuant to Section 25174.1" for ", 25205.2, 25205.5," after "25174". Stats. 1990, Ch. 1286, in effect September 25, 1990, but operative January 1, 1991, added "of the Health and Safety Code" after "25174", deleted "or 25345" after "25174.1", and added "or the surcharge . . . Safety Code". Stats. 1991, Ch. 798, in effect January 1, 1992, added "or Section 429.14 . . . Code" after "Code". Stats. 1992, Ch. 1345, in effect January 1, 1993, deleted "or imposed pursuant to" before "Section 25174.1", deleted "or" before "Section 429.14", added "Section 25205.14 . . . Code" after "429.14 of the Health and Safety Code", and added "subject to" before "surcharge imposed". Stats. 1996, Ch. 720, in effect January 1, 1997, substituted "105190" for "429.14" after "Safety Code, Section". Stats. 1997, Ch. 870 (SB 660), in effect January 1, 1998, but operative July 1, 1998, added "Section 25173.6 of the Health and Safety Code, subdivision (a) of" before "25174", deleted "Section 25174.1 of the Health and Safety Code," before "Section 105190", and substituted "or Section 25205.14" for "Section 25205.14 of the Health and Safety Code, or subject to the surcharge imposed pursuant to Section 25205.9" after "and Safety Code,".

**43102. Security.** The board, whenever it deems it necessary to ensure compliance with this part, may require any person subject to this part to place with it any security that the board determines to be reasonable, taking into account the circumstances of that person. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the board in trust to be used solely in the manner provided by this section. The board may sell the security at public auction if it becomes necessary to do so in order to recover any tax or any amount required to be collected, including any interest or penalty due. Notice of the sale shall be served upon the person who placed the security personally or by mail. If service is made by mail, service shall be addressed to the person at his or her address as it appears in the records of the board. Service shall be made at least 30 days prior to the sale in the case of personal service, and at least 40 days prior to the sale in the case of service by mail. Upon any sale, any surplus above the amounts due shall be returned to the person who placed the security.

**History.**—Stats. 1982, Ch. 496, in effect July 12, 1982, substituted "to this part" for "thereto" after "subject" and added "to be . . . person" after "determine" in the first sentence; added "including any" after "collected in the second sentence; substituted "shall" for "may" after "sale" in the third sentence; deleted "made . . . shall be" before "addressed" in the fourth sentence; and, added a new fifth sentence. Stats. 1991, Ch. 236, in effect July 29, 1991, substituted "ensure" for "insure" after "necessary to"; and added the second sentence. Stats. 1994, Ch. 903, in effect January 1, 1995, substituted "any security that the board determines" for "such security as the board may determine" after "place with it" in the first sentence, and deleted "Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof." as the next to last sentence.

CHAPTER 3. DETERMINATIONS

- Article 1. Returns and Payments. §§ 43151–43160.
- 1.1. Payment by Electronic Funds Transfer. §§ 43170–43173.
  2. Deficiency Determinations. §§ 43201–43204.
  3. Determinations If No Return Made. § 43251. [Repealed.]
  4. Redeterminations. §§ 43301–43307.
  5. Jeopardy Determinations. §§ 43350–43352.

Article 1. Returns and Payments

- § 43151. Monthly returns.
- § 43152. Consolidated statement.
- § 43152.5. Dates due and payable; remittance. [Repealed.]
- § 43152.6. Fee; due and payable.
- § 43152.7. Fee; due and payable.
- § 43152.8. Notification by the department.
- § 43152.9. Surcharge; due and payable.
- § 43152.10. Fees; due and payable.
- § 43152.11. Fee; due and payable.
- § 43152.12. Fee; due and payable.
- § 43152.13. Fee; due and payable.
- § 43152.14. Fee; due and payable.
- § 43152.15. Prepayment of consolidated fees.
- § 43152.16. Refunds.
- § 43153. Returns; other than periods specified.
- § 43154. Extensions.
- § 43155. Penalties for late payment.
- § 43156. Interest.
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- § 43158. Relief from interest due to disaster.
- § 43158.5. Relief of interest.
- § 43159. Reasonable reliance on written advice; relief of tax, interest, and penalty.
- § 43160. Filing of closing returns.

**43151. Monthly returns.** (a) The fee imposed pursuant to Section 25174.1 of the Health and Safety Code, which is a tax collected and administered under Section 43051, is due and payable to the board monthly on or before the last day of the third calendar month following the end of the calendar month for which the fee is due. Each taxpayer shall, on or before the last day of the third calendar month following the end of the calendar month for which the fee is due, make out a tax return for the calendar month, in the form as prescribed by the board, which may include, but not be limited to, electronic media in accordance with subdivision (c). The taxpayer shall deliver the return, together with a remittance of the amount of fee due, to the office of the board on or before the last day of the third calendar month following the end of the calendar month for which the fee is due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) With the approval of the board, a taxpayer who has more than one facility subject to the taxes collected and administered under this chapter, may file a combined tax return covering operations at more than one, or all, of those facilities.

(c) The form required to be submitted by the taxpayer pursuant to this section shall show, for the taxpayer and for each person from whom the taxpayer accepted hazardous waste for disposal, all of the following:

(1) The total amount of hazardous waste subject to the tax and the amount of the tax for the period covered by the return.

(2) The amount of hazardous waste disposed during the tax period that is in each of the fee categories described in Section 25174.6 of the Health and Safety Code, and the amount of disposal fees paid for each of those categories.

(3) The amount of hazardous waste received for disposal by the taxpayer's facility or facilities that is exempt from the payment of disposal fees pursuant to Section 25174.7 of the Health and Safety Code, including a copy of any written documentation provided for any shipment or shipments of hazardous waste received by a facility.

(4) The amount of RCRA hazardous waste which is treated by the taxpayer so that the waste is considered to be non-RCRA hazardous waste for purposes of the disposal fee, pursuant to paragraph (2) of subdivision (b) of Section 25174.6.

(d) (1) Each taxpayer shall maintain records documenting all of the following information for each person who has submitted hazardous waste for disposal by the taxpayer during each calendar month and shall make those records available for review and inspection at the request of the board or the department:

(A) The tonnage of hazardous waste submitted for disposal.

(B) The type of hazardous waste disposed as specified by Section 25174.6 of the Health and Safety Code, including both of the following:

(i) Any characterization of the hazardous waste made by the person submitting the hazardous waste for disposal.

(ii) Any other documentation which the taxpayer maintains regarding the type of hazardous waste disposed to land.

(C) Any representation made by the person submitting the hazardous waste regarding any exemptions that may be applicable to the payment of disposal fees.

(D) For any RCRA hazardous waste which is treated by the taxpayer so that the waste is considered to be non-RCRA hazardous waste for purposes of the disposal fee, pursuant to paragraph (2) of subdivision (b) of Section 25174.6, all of the following information:

(i) The tonnage and type of hazardous waste.

(ii) The method or methods used to treat the hazardous waste.

(iii) Operating records documenting the treatment activity.

(iv) Representative and statistical waste sampling and analysis data demonstrating that the waste is no longer RCRA hazardous waste at the time of disposal.

(2) If the hazardous wastes submitted for disposal were accompanied by a manifest, the information specified in paragraph (1) shall be maintained by manifest number for each calendar month.

**History.**—Stats. 1982, Ch. 496, in effect July 12, 1982, substituted “collected . . . under” for “imposed by” before “Section” in the first sentence of, substituted “the” for “such” before “form,” deleted “is” before “prescribed,” and substituted “any” for “such” before “other” and “that” for “as” after “information” in the second sentence of, the first paragraph; and, added the second and third paragraphs. Stats. 1985, Ch. 20, effective March 29, 1985, substituted “quarterly” for “monthly” after “Section 43051 are due and payable to the board”, substituted “the” for “each” after “on or before the 15th day of” in the first paragraph, added “following the quarterly period for which the tax is due” at the end of the first sentence, substituted “the” for “each” in the second sentence of the first paragraph after “on or before the 15th day of”, added “following the quarterly period for which the tax is due”, in the second sentence of the first paragraph, substituted “quarterly period” for “calendar month” after “shall make out a tax return for the preceding” in the first paragraph, added “following the quarterly period for which the tax is due” at the end of the first paragraph, substituted “1985” for “1982” at the end of the section referring to the date the section becomes operative. Stats. 1988, Ch. 1376, in effect September 26, 1988, deleted “taxes” after “The” and added “fee . . . tax” in the first sentence of, substituted “last” for “15th” before “day” in the first sentence of, the first paragraph. Substituted “last” for “15th” before “day” in the second sentence of, added “and solid waste” after “waste” in the second sentence of, and substituted “each” for “the” in the second sentence of, the first paragraph. Substituted “last” for “15th” in the last sentence of the first paragraph. Stats. 1989, Ch. 1032, in effect September 29, 1989, substituted “25174.1” for “25174” in the first sentence of the first paragraph and deleted “hazardous waste” after “or all, of those” in the last sentence of the second paragraph. Stats. 1990, Ch. 1268, in effect September 25, 1990, but operative January 1, 1991, substituted “is” for “are” after “43051”, deleted “and solid waste” after “hazardous waste” and substituted “the” for “each” before “tax” in the second sentence, deleted “hazardous waste” before “facility” in the second paragraph, and deleted third paragraph which stated, “This section shall become operative July 1, 1985.” Stats. 1995, Ch. 638, in effect January 1, 1996, substituted “quarterly” for “monthly”, inserted “third” before “calendar month”, and substituted “end of the calendar month” for “quarterly period” in the first sentence. Inserted “third” before “calendar month”, substituted “end of the calendar month” for “quarterly period”, substituted “calendar month” for “quarterly period”, and substituted “in accordance with subdivision (c)” for “showing the total amount of hazardous waste subject to the tax, the amount of tax for the period covered by the return, and any other information the board deems necessary” in the second sentence. Substituted “fee” for “tax”, inserted “third calendar” before “month” and substituted “for which the fee is due” for “following the quarterly period for which the tax is due” in the third sentence. Adds “The form required . . . for each calendar month.” Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted “in the form . . . electronic media” for “in the form prescribed by the board” after “calendar month,” in the second sentence of, and added the fourth sentence to, subdivision (a).

*Text of section operative from January 1, 1996*

43152. **Consolidated statement.** (a) The board shall establish and annually submit to each generator of hazardous waste a consolidated statement of fees required to be paid by the generator to the board pursuant to Sections 25205.2, 25205.5, 25205.6, and 25205.9 of the Health and Safety Code.

(b) Notwithstanding any other provision of law, any return or other document that is required to be submitted by a generator of hazardous waste to the board in connection with the payment of any fee specified in subdivision (a) shall instead be submitted together with the consolidated statement made pursuant to subdivision (a).

43152.5. **Dates due and payable; remittance.** [Repealed by Stats. 1995, Ch. 637, in effect January 1, 1996.]

43152.6. **Fee; due and payable.** [Stats. 1991, Ch. 1123 (SB 194), effective October 14, 1991, operative until July 1, 1991, and repealed, operative July 1, 1991, by its own terms.]

43152.6. **Fee; due and payable.** (a) The fee imposed pursuant to Section 25205.2 of the Health and Safety Code which is collected and administered under Section 43053 of this code is due and payable to the board annually on or before the last day of the second month following the end of the calendar year.

(b) Every operator of a facility subject to the fee imposed pursuant to Section 25205.2 of the Health and Safety Code shall file an annual return in the form as prescribed by the board, which may include, but not be limited to, electronic media and pay the proper amount of fee due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) For purposes of subdivision (a), except as provided in subdivision (d), the operator of a facility shall pay the applicable fee based on the type and size of the facility, as specified in Sections 25205.1 and 25205.4 of the Health and Safety Code. The board shall credit the prepayment of the fee made pursuant to Section 43152.12 against the amount due with the annual return.

(d) Notwithstanding subdivision (c), the fee for the 1991 reporting period, which is from July 1, 1991, to December 31, 1991, inclusive, is 50 percent of the fee specified in Section 25205.4 of the Health and Safety Code, based on the type and size of the facility, as specified in Section 25205.4 of the Health and Safety Code.

History.—Added by Stats. 1991, Ch. 1123, in effect October 14, 1991, operative July 1, 1991. Stats. 1995, Ch. 637, in effect January 1, 1996, added “second” before “month” in subdivision (a). Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted “in the form . . . electronic media” for “on the forms provided by the board” after “annual return” in the first sentence of, and added the second sentence to, subdivision (b).

**43152.7. Fee; due and payable.** (a) The fee imposed pursuant to Section 25205.5 of the Health and Safety Code which is collected and administered under Section 43053 is due and payable on the last day of the second month following the end of the calendar year.

(b) Every generator subject to the fee imposed pursuant to Section 25205.5 of the Health and Safety Code shall file an annual return in the form as prescribed by the board, which may include, but not be limited to, electronic media and pay the proper amount of fee due. The board shall credit the prepayment made pursuant to Section 43152.15 against the amount due with the annual return. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) The fee imposed by Section 25205.5 of the Health and Safety Code shall be offset by any fees paid by the generator for the preceding calendar year for a local hazardous waste management program conducted by a local agency pursuant to a memorandum of understanding with the department. The amount of the credit provided under this subdivision shall not exceed an amount equal to the fees paid to the local agency or the generator fee due under Section 25205.5 of the Health and Safety Code, whichever is less. The credit for local fees paid shall not include fees required under Chapter 6.7 (commencing with Section 25280) or Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

History.—Added by Stats. 1988, Ch. 1376, in effect September 26, 1988. Stats. 1993, Ch. 1145, in effect January 1, 1994, deleted “as a tax” after “and administered” in subdivision (a); substituted “fee” for “tax” after “subject to the” in subdivision (b); and substituted “for” for “during” after “generator” in subdivision (c). Stats. 1995, Ch. 637, in effect January 1, 1996, added “second” before “month” in subdivision (a); substituted “generator” for “operator” after “every”, and added “The board...the annual return” after “due” in subdivision (b). Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, deleted “, on forms prescribed by the board,” after “Safety Code shall”, added “in the form . . . electronic media” after “annual return” in the first sentence of, and added the third sentence to, subdivision (b).

**43152.8. Notification by the department.** (a) The department shall notify the board of the occurrence of any of the following:

(1) The issuance of a hazardous waste facilities permit or grant of interim status to any facility operator, who has not previously been granted interim status, within 30 days after the facility permit or grant of interim status is issued.

(2) When any facility changes size category pursuant to Section 25205.4 of the Health and Safety Code.

(b) This section shall become operative July 1, 1991.

*History.—Added by Stats. 1991, Ch. 1123, in effect October 14, 1991.*

**43152.9. Fee; due and payable.** (a) The fee imposed pursuant to Section 25205.6 of the Health and Safety Code, which is collected and administered under Section 43054, is due and payable on the last day of the second month following the end of the calendar year.

(b) Every corporation, limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship subject to the fee imposed pursuant to Section 25205.6 of the Health and Safety Code shall file an annual return in the form as prescribed by the board, which may include, but not be limited to, electronic media and pay the proper amount of fee due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

*History.—Added by Stats. 1989, Ch. 269, in effect August 3, 1989. Stats. 2001, Ch. 251 (AB 1123), substituted “43054” for “43053” in subdivision (a), effective January 1, 2002. Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, deleted “, on forms prescribed by the board,” after “Safety Code shall”, and added “in the form . . . electronic media” after “annual return” in the first sentence of, and added the second sentence to, subdivision (b). Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, added “, limited liability company . . . sole proprietorship” after “Every corporation” in the first sentence of subdivision (b).*

**43152.10. Fees; due and payable.** The fees imposed pursuant to Sections 25205.7, 25205.8, 25205.14, 25221, and 25343 of the Health and Safety Code, which are collected and administered under Section 43053 and 43054, are due and payable within 30 days after the date of assessment and the feepayer shall deliver a remittance of the amount of the assessed fee to the office of the board within that 30-day period, except as provided in subdivision (e) of Section 25205.14 of the Health and Safety Code.

*History.—Added by Stats. 1989, Ch. 269, in effect August 3, 1989. Stats. 1989, Ch. 1032, in effect September 29, 1989, added “and 43054”. Stats. 1991, Ch. 1123, in effect October 14, 1991, added “25221” after “25205.8”; and substituted “25343” for “25347.6”. Stats. 1993, Ch. 411, in effect September 21, 1993, added “25205.14” after “25205.8,” and added “, except as . . . Safety Code” after “30-day period”.*

**43152.11. Surcharge; due and payable.** (a) The surcharge imposed pursuant to Section 25205.9 of the Health and Safety Code, which is collected and administered under Section 43055, is due and payable to the board on the last day of the second month following the end of the calendar year.

(b) The surcharge shall be incorporated into the return form prescribed by the board, which every operator subject to the fee imposed by Section 25205.5 of the Health and Safety Code is required to file and pay annually, in accordance with Section 43152.7. The surcharge shall be in addition to the fee imposed by Section 25205.5 of the Health and Safety Code.

(c) The surcharge imposed by Section 25205.9 of the Health and Safety Code shall be offset by any fees paid by the generator during the preceding calendar year for a local hazardous waste management program conducted by a local agency pursuant to a memorandum of understanding with the department. The offset provided for under this subdivision shall be allowed to the same extent as the offset provided in subdivision (c) of Section 43152.7.

History.—Added by Stats. 1993, Ch. 411, in effect September 21, 1993. Stats. 1993, Ch. 1113, in effect January 1, 1994, added “and pay” after “to file” in the first sentence of subdivision (b). Stats. 1995, Ch. 637, in effect January 1, 1996, inserted “second” before “month” in the first sentence of subdivision (a).

**43152.12. Fee; due and payable.** (a) In addition to the requirements imposed pursuant to Section 43152.6, every operator of a facility subject to the fee specified in Section 25205.2 of the Health and Safety Code shall make two prepayments of the fee to the board, which are due and payable on or before the last day of February and the last day of August of each calendar year. Each prepayment shall be accompanied by a prepayment return in a form prescribed by the board.

(b) For purposes of subdivision (a), the amount of each prepayment shall be not less than 50 percent of the applicable fee imposed on the facility, based on the facility’s type and size, as stated on the hazardous waste facilities permit, interim status document, or Part A application, or as specified in Sections 25205.1 and 25205.4 of the Health and Safety Code.

(c) The board shall credit the amount of the prepayment against the amount of the fee due and payable for the reporting period in which the prepayments are due.

(d) Any person required to make a prepayment pursuant to this section who fails to make a prepayment by the due dates specified in subdivision (a) shall also pay the penalties and interest in accordance with Section 43155.

History.—Added by Stats. 1991, Ch. 1123, in effect October 14, 1991. Stats. 1995, Ch. 637, in effect January 1, 1996, substitutes “two” for “a” before the word “prepayment” and “prepayment” is changed to “prepayments”, “are” is substituted for “is”, and the words “the last day of February and the last day of August” are substituted for “April 25” in the first sentence. In the second sentence, “Each” is substituted for “The”. In the third sentence, “each” is substituted for “the” before the word “prepayment” and the words “stated on the hazardous waste . . . the Health and Safety Code” is substituted for the words “specified in Sections 25205.1 . . . prepayment is due”. In the fourth sentence, the word “prepayment” is changed to “prepayments” and “is” is changed to “are”. In the fifth sentence, “April 25” is changed to “the due dates specified in subdivision (a).” The sixth sentence is deleted. Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, substituted “Section 43155” for “Sections 43155 and 43156” after “in accordance with” of subdivision (d).

**43152.13. Fee; due and payable.** (a) The fee imposed pursuant to Section 105190 of the Health and Safety Code, which is collected and administered under Section 43056, is due and payable on the last day of the second month following the end of the calendar year.

(b) Every employer subject to the fee imposed pursuant to Section 105190 of the Health and Safety Code shall in the form as prescribed by the board, which may include, but not be limited to, electronic media file an annual return and pay the proper amount of fee due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Added by Stats. 1991, Ch. 798, in effect January 1, 1992. Stats. 1996, Ch. 720, in effect January 1, 1997, substituted “105190” for “429.14” after “pursuant to Section” in both subdivisions (a) and (b). Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted “in the form . . . electronic media” for “on forms prescribed by the board,” after “Safety Code shall”, in the first sentence of, and added the second sentence to, subdivision (b).

**43152.14. Fee; due and payable.** The fee imposed pursuant to Section 105310 of the Health and Safety Code, that is collected and administered under Section 43057, is due and payable on or before April 1 of each year for the previous calendar year.

History.—Added by Stats. 1991, Ch. 799, in effect January 1, 1992. Stats. 1996, Ch. 1023, in effect September 29, 1996, substituted “105310” for “327.7” after “pursuant to Section” and substituted “that” for “which” after “and Safety Code,”. Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, added the second and third sentences. Stats. 2004, Ch. 527 (SB 1881), in effect January 1, 2005, deleted last sentence.

**43152.15. Prepayment of consolidated fees.** (a) In addition to the requirements imposed pursuant to Sections 43152.7 and 43152.11, every generator subject to the fees specified in Sections 25205.5 and 25205.9 of the Health and Safety Code shall make a prepayment of the fee by site to the board which is due and payable on or before the last day of August of each calendar year. The prepayment shall be accompanied by a prepayment return in a form prescribed by the board.

(b) For purposes of subdivision (a), the amount of the prepayment shall be not less than either of the following:

(1) One hundred percent of the applicable fee imposed on the generator, based on the generator’s fee category as specified in Section 25205.5 of the Health and Safety Code for the total volume of hazardous waste generated by site during the period January 1 to June 30, inclusive, of the current calendar year in which the prepayment is due. The prepayment may be offset by fees paid by the generator for a local hazardous waste management program conducted by a local agency pursuant to a memorandum of understanding with the department which includes the following:

(A) The local fees are paid for the current calendar year for which the prepayment is due or the local fees are paid for the preceding calendar year, if fees have not been paid for the current year.

(B) The offset is subject to the limitations and requirements specified in subdivision (c) of Section 43152.7.

(2) Fifty percent of the generator fee liability paid to the board by site for the preceding calendar year provided the generator paid a generator fee liability to the board for the preceding calendar year for that site.

(c) The board shall credit the amount of the prepayment against the amount of the fee due and payable for the calendar year in which the prepayment is due.

(d) Notwithstanding any other provision in this section, the prepayment of a generator fee shall not be required for any amount due that is less than five hundred dollars (\$500), or for any other amount due if the board determines that prepayment is not in the best economic interest of the program.

(e) Any person required to make a prepayment pursuant to this section who fails to make a prepayment by the due date specified in subdivision (a) shall also pay penalties and interest in accordance with Section 43155.

History.—Added by Stats. 1995, Ch. 637, effective January 1, 1996. Stats. 1996, Ch. 226, in effect July 22, 1996, added subdivision (d) and relettered former subdivision (d) as (e). Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, substituted “Section 43155” for “Sections 43155 and 43156” after “in accordance with” of subdivision (e).

*Text of section operative July 1, 1998*

43152.16. **Refunds.** (a) The board shall issue refunds, if directed to do so by the department, upon making the certification specified in subdivision (d), for some, or all, of the fees imposed pursuant to Sections 25205.5 and 25205.9 of the Health and Safety Code, for hazardous waste generated in 1997.

(b) The board may issue a refund only to a generator who received a credit pursuant to Section 43152.7 or 43152.11 for fees paid for hazardous waste generated in 1996.

(c) The refund made to a generator pursuant to this section shall not exceed the generator's credit for hazardous waste generated in 1996, or exceed the generator's fee paid to a certified unified program agency in 1997, whichever amount is less.

(d) The board may issue refunds pursuant to this section only if the department certifies that funds for these refunds are available.

History.—Added by Stats. 1997, Ch. 870 (SB 660), in effect January 1, 1998, but operative July 1, 1998.

43153. **Returns; other than periods specified.** The board, if it deems it necessary in order to facilitate the administration of this part, may require returns and payments specified under Section 43151 to be made for periods longer than quarterly.

History.—Added by Stats. 1985, Ch. 20, effective March 29, 1985.

43154. **Extensions.** The board for good cause may extend, for a period of time not to exceed one month, the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment.

History.—Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 1926" for "rate . . . thereof" before "from" in the second paragraph. Stats. 1984, Ch. 1020, operative July 1, 1985, added "modified" before "adjusted", deleted "annual" before "rate", added "per month, or fraction thereof" before "established", and substituted "Section 6591.5" for "Section 19269."

43155. **Penalties for late payment.** (a) Any person who fails to pay any tax or prepayment, except amounts of determinations made by the board under Article 2 (commencing with Section 43201), within the time required shall pay a penalty of 10 percent of the tax or prepayment, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

(b) Any person who fails to file a return or prepayment with the board in accordance with this part within the time prescribed for the filing of a return or prepayment, a penalty of 10 percent of the amount of the tax or prepayment shall be added thereto on account of the delinquency.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the taxes for which the return or prepayment is required for any one return or prepayment.

*History.*—Added by Stats. 1991, Ch. 1123, in effect October 14, 1991. Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, substituted “Any person who . . . date of payment” for “If the tax . . . of the delinquency” of subdivision (a), substituted “Any person who . . . of the delinquency” for “This section shall become operative on July 1, 1991.” of subdivision (b), added subdivision (c).

**43156. Interest.** (a) All taxes or prepayments not paid on the date when due and payable shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from and after that date until paid.

(b) This section shall become operative July 1, 1991.

*History.*—Added by Stats. 1991, Ch. 1123, in effect October 14, 1991. Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, repealed section.

**43157. Excusable delay.** (a) If the board finds that a person’s failure to make a timely return, prepayment, or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 43155, 43170, and 43306.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

*History.*—Stats. 1989, Ch. 768, in effect January 1, 1990, substituted “43306” for “43251”. Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, re-numbered first sentence as subdivision (a), re-numbered second sentence as subdivision (b), added “prepayment” after “a timely return” in subdivision (a), substituted “43155, 43170, and 43306” for “43155 and 43306” in subdivision (a), added “Except as provided in subdivision (c),” before “any person seeking” in subdivision (b), added subdivision (c).

**43158. Relief from interest due to disaster.** If the board finds that a person’s failure to make a timely return or payment was due to disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest provided for by Sections 43154, 43155, 43170, and 43201. Any person seeking to be relieved of interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

*History.*—Added by Stats. 1989, Ch. 14, First Extraordinary Session, in effect November 7, 1989. Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, substituted “43155, 43170” for “43156” of the first sentence.

**43158.5. Relief of interest.** (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), substituted “this part” for “Section 43156 and . . . not made timely,” in subdivision (a), effective January 1, 2002.

**43159. Reasonable reliance on written advice; relief of tax, interest and penalty.** (a) If the board finds that a person’s failure to make a timely return or payment is due to the person’s reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person’s failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board’s regulations, or a final decision of a court, which renders the board’s earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person’s written request to the board and a copy of the board’s written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board’s written advice to that person.

History.—Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

**43160. Filing of closing returns.** Every person who is required to file the returns and make the payments specified in Section 43151, 43152.6, 43152.7, 43152.9, 43152.11, 43152.13, 43152.14, or 43153 shall, upon transfer or discontinuance of operations, file closing returns on forms

prescribed by the board. The closing returns shall be due and payable on the last day of the month following the end of the quarterly period in which the transfer or discontinuance takes place.

**History.**—Added by Stats. 1992, Ch. 852, in effect September 21, 1992. Stats. 1994, Ch. 903, in effect January 1, 1995, renumbered the section which was formerly numbered 43158.

**Article 1.1. Payment by Electronic Funds Transfer**

- § 43170. Electronic funds transfer payments.
- § 43171. Relief of penalty.
- § 43172. Definitions.
- § 43173. Electronic filing.

**43170. Electronic funds transfer payments.** (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 43151). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 43201), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or amount of tax required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return or prepayment. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 43155.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001. Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, operative January 1, 2006, deleted the former last sentence of subdivision (b) which provided "The election shall be operative for a minimum of one year."

**43171. Relief of penalty.** If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 43170. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

**43172. Definitions.** (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank

account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 43170 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

*History.—Added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.*

**43173. Electronic filing.** (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

*History.—Added by Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003.*

## Article 2. Deficiency Determinations

- § 43201. Deficiency determination; notice of determination.
- § 43202. Limitations; deficiency determinations.
- § 43203. Limitations; deficiency determinations; decedent.
- § 43204. Waiver.

**43201. Deficiency determination; notice of determination.** (a) If the board is dissatisfied with the return or report filed or the amount of tax paid to the state by any taxpayer, or if no return or report has been filed or no payment or payments of the taxes have been made to the state by a taxpayer, the board may compute and determine the amount to be paid, based upon any information available to it. In addition, where the board is authorized to collect a tax for another state agency, the board may issue a notice of determination or similar billing document for collection of the tax. One or more additional determinations may be made of the amount of tax due for one, or for more than one, period. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the tax, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or

periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is found to have been occasioned by negligence or intentional disregard of this part or authorized regulations, a penalty of 10 percent of the amount of the determination shall be added, plus interest as provided above.

(c) If any part of the deficiency for which a determination of an additional amount due is found to be occasioned by fraud or an intent to evade this part or authorized regulations, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the taxpayer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the taxpayer at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, sub-post office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**History.**—Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from” in the third sentence. Stats. 1982, Ch. 496, in effect July 12, 1982, added “(a)” before “If” in, substituted “report” for “returns” before “filed” in, added “or if . . . a taxpayer” after “any taxpayer” in, and substituted “the board” for “it” before “may” in, the first sentence of, substituted “rate . . . thereof” for “adjusted . . . 19269” before “from” in, and “became due and payable” for “should have been reported” before “until” in, the second sentence of, new subdivision (a); added “(b)” before the fourth sentence; substituted “regulations” for “rules” after “authorized” in new subdivision (b); added “(c)” before the fifth sentence; substituted “regulations” for “rules” after “authorized” and “in subdivision (a)” for “above” after “provided” in new subdivision (c); added “(d)” before the sixth sentence; and, substituted “a” for “the” board “United” in the third sentence of new subdivision (d). Stats. 1982, Ch. 1589, in effect January 1983, substituted “adjusted . . . 19269” for “rate . . . thereof” in the third sentence of subdivision (a). Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted”, deleted “annual” before “rate”, added “per month or fraction thereof” before “established”, and substituted “Section 6591.5” for “Section 19269”. Stats. 2004, Ch. 527 (SB 1881), in effect January 1, 2005, added second sentence providing “In addition, where . . . of the tax” to subdivision (a), deleted “is made” after “additional amount due” in subdivisions (b) and (c).

**43202. Limitations; deficiency determinations.** (a) Except in the case of fraud, intent to evade this part, authorized rules and regulations, or failure to make a return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount should have been paid or the return was due, or within three years after the return was filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the report or return was due.

(b) The limitation specified in subdivision (a) shall not apply to a liability for the fee imposed pursuant to Section 25205.5 of the Health and Safety Code which is proposed to be determined with respect to a taxpayer if a notice of determination for the fee imposed pursuant to Section 25205.2 of the Health and Safety Code has been given pursuant to Section 43201 or

43350 for the same period and site, or with respect to a taxpayer that has paid the fee imposed by Section 25205.2 of the Health and Safety Code for the same period and site. The notice of determination with respect to the fee imposed pursuant to Section 25205.5 of the Health and Safety Code shall be given within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.2 of the Health and Safety Code.

(c) The limitation specified in subdivision (a) shall not apply to a liability for the fee imposed pursuant to Section 25205.2 of the Health and Safety Code which is proposed to be determined with respect to a taxpayer if a notice of determination for the fee imposed pursuant to Section 25205.5 of the Health and Safety Code has been given pursuant to Section 43201 or 43350 for the same period and site, or with respect to a taxpayer that has paid the fee imposed by Section 25205.5 of the Health and Safety Code for the same period and site. The notice of determination with respect to the fee imposed pursuant to Section 25205.2 of the Health and Safety Code shall be given within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.5 of the Health and Safety Code.

History.—Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “paid” for “returned” in the first sentence, added “report or” before “return” in last sentence. Stats. 1993, Ch. 1113, in effect January 1, 1994, added “or the return . . . expires later” after “been paid”. Stats. 1995, Ch. 630, in effect January 1, 1996, added “(b) The limitation specified . . . of the Health and Safety Code”.

**43203. Limitations; deficiency determinations; decedent.** In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

**43204. Waiver.** If before the expiration of the time prescribed in Section 43202 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

### Article 3. Determinations If No Return Made \*

§ 43251. Determinations; failure to file return. [Repealed.]

### Article 4. Redeterminations

- § 43301. Petition for redetermination.
- § 43302. Form and content of petition.
- § 43303. Oral hearing.
- § 43304. Decrease or increase of determination.
- § 43305. Finality date of order or decision.
- § 43306. Due date of determination; penalty.
- § 43307. Service of notice.

\* Article 3 was repealed by Stats. 1982, Ch. 496, in effect July 12, 1982.

**43301. Petition for redetermination.** Any person from whom an amount is determined to be due under Article 2 (commencing with Section 43201), or any person directly interested, may petition for a redetermination thereof within 30 days after service upon him or her of notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration thereof.

No petition for redetermination of taxes determined under this part shall be accepted or considered by the board if the petition is founded upon the grounds that the director has improperly or erroneously determined that any substance is a hazardous or extremely hazardous waste. Any appeal of a determination that a substance is a hazardous or extremely hazardous waste shall be made to the director.

History.—Stats. 1982, Ch. 496, in effect July 12, 1982, deleted “or Article . . . 43251)” after “43201)” and extended the period for petition from 30 days to 60 days. Stats. 1984, Ch. 1707, substituted “30 days” for “60 days” and “30-day period” for “60-day period” in the first paragraph.

**43302. Form and content of petition.** Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

**43303. Oral hearing.** If a petition for redetermination is filed within the 30-day period, the board shall reconsider the amount determined to be due, and, if the person has so requested in his or her petition, the board shall grant him or her an oral hearing and shall give him or her 10 days’ notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

History.—Stats. 1982, Ch. 496, in effect July 12, 1982, substituted “60-day” for “30-day” before “period” in the first sentence. Stats. 1984, Ch. 1707, in effect January 1, 1984, substituted “30-day period” for “60-day period” before “the board” in the first sentence.

**43304. Decrease or increase of determination.** The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the 25 percent penalty imposed by Section 43201 or 43251 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the date the return for the period for which the increase is asserted was due.

**43305. Finality date of order or decision.** The order or decision of the board upon a petition for redetermination shall become final 30 days after service upon the petitioner of notice thereof.

**43306. Due date of determination; penalty.** All amounts determined to be due by the board under Article 2 (commencing with Section 43201) are due and payable at the time they become final, and, if not paid when due and

payable, a penalty of 10 percent of the amount determined to be due shall be added to the amount due and payable.

History.—Stats. 1982, Ch. 496, in effect July 12, 1982, deleted “or Article . . . 43251)” after “43201),” deleted “there . . . thereto” before “a penalty” and added “shall . . . payable” after “to be due.”

**43307. Service of notice.** Any notice required by this article shall be served personally or by mail in the same manner as prescribed for service of notice by Section 43201.

#### Article 5. Jeopardy Determinations

- § 43350. Jeopardy determinations
- § 43351. Petition for redetermination; security
- § 43352. Administrative hearing.

**43350. Jeopardy determinations.** If the board believes that the collection of any amount of tax will be jeopardized by delay, it shall thereupon make a determination of the amount of tax due, noting that fact upon the determination, and the amount of tax shall be immediately due and payable. If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest provided in Section 43155 shall attach to the amount of tax specified therein.

History.—Stats. 2004, Ch. 527 (SB 1881), in effect January 1, 2005, substituted “Section 43155” for “Sections 43155 and 43156” in the last sentence.

**43351. Petition for redetermination; security.** The taxpayer against whom a jeopardy determination is made may file a petition for the redetermination thereof, pursuant to Article 4 (commencing with Section 43301), with the board within 10 days after the service upon the taxpayer of notice of the determination, but he or she shall, within the 10-day period, deposit with the board such security as it deems necessary to insure compliance with the provisions of this part. The security may be sold by the board at public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by Section 43201. Upon any such sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

**43352. Administrative hearing.** In accordance with such rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(a) To establish that the determination is excessive.

(b) To establish that the sale of property that may be seized after issuance of the jeopardy determination, or any part thereof, shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

- (c) To request the release of all or a part of the property to the person.
- (d) To request a stay of collection activities.

The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. The person shall not be required to post any security in order to file the application and to obtain the hearing. However, if the person does not deposit, within the 10-day period prescribed in Section 43351, such security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect the provisions of Section 43350 relating to the finality date of the determination or to penalty or interest.

#### CHAPTER 4. COLLECTION OF TAX

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| Article 1. | Suit for Tax. §§ 43401-43402.           |
| 2.         | Judgment for Tax. §§ 43413-43414.       |
| 3.         | Warrant for Collection. §§ 43421-43423. |
| 4.         | Seizure and Sale. §§ 43431-43434.       |
| 5.         | Miscellaneous. §§ 43441-43448.5.        |

##### Article 1. Suit for Tax

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| § 43401. | Legal actions; Attorney General. |
| § 43402. | Attachment.                      |

**43401. Legal actions; Attorney General.** The board may bring such legal actions as are necessary to collect any deficiency in the tax required to be paid, and, upon the board's request, the Attorney General shall bring the actions.

**43402. Attachment.** In any suit brought to enforce the rights of the state with respect to taxes, a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the tax, of the delinquency of the amount of tax, interest, and penalty set forth therein, and compliance by the board with all provisions of this part in relation to the computation and levy of the tax. In the action, a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure.

History.—Stats. 1982, Ch. 496, in effect July 12, 1982, deleted "without . . . Procedure" after "Procedure" at the end of the second sentence.

##### Article 2. Judgment for Tax

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| § 43411. | Request for judgment. [Repealed.]       |
| § 43412. | Abstract of judgment; lien. [Repealed.] |
| § 43413. | State of tax lien.                      |
| § 43414. | Release of liens                        |

**43411. Request for judgment.** [Repealed by Stats. 1982, Ch. 496, in effect July 12, 1982.]

43412. **Abstract of judgment; lien.** [Repealed by Stats. 1982, Ch. 496, in effect July 12, 1982.]

43413. **State tax lien.** (a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Such a lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent.

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board.

(3) For amounts determined under Section 43350 (pertaining to jeopardy assessments), the date the notice of the board’s finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

43414. **Release of liens.** (a) If the board determines that the amount of tax, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the tax, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that such property has been released or that the lien has been subordinated as provided in the certificate.

### Article 3. Warrant for Collection

- § 43421. Warrant; time of issuing.
- § 43422. Fees and expenses.
- § 43423. Collection of fees.

43421. **Warrant; time of issuing.** At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording of an abstract under Section 43412 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board, or its authorized representative, may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ

of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of, and sale pursuant to, a writ of execution.

**History.**—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to any sheriff” in the second sentence.

**43422. Fees and expenses.** The board may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for their services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

**History.**—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to the sheriff” in the first sentence.

**43423. Collection of fees.** The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any other manner provided in this part for the collection of the tax.

#### Article 4. Seizure and Sale

- § 43431. Seizure and sale.
- § 43432. Notice of sale.
- § 43433. Bill of sale; deed.
- § 43434. Disposition of proceeds.

**43431. Seizure and sale.** Whenever any taxpayer is delinquent in the payment of the tax, the board, or its authorized representative, may seize any property, real or personal, of the taxpayer, and sell at public auction the property seized, or a sufficient portion thereof, to pay the tax due, together with any penalties imposed for the delinquency and all costs that have been incurred on account of the seizure and sale.

**43432. Notice of sale.** Notice of the sale, and the time and place thereof, shall be given to the delinquent taxpayer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the taxpayer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city, or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties, and costs, the name of the taxpayer, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

**History.**—Stats. 1990, Ch. 1528, in effect January 1, 1991, deleted “Written” before “Notice”, “intended” before “sale, and”, substituted “who” for “appearing of record to”, added “of record” after “interest”, substituted “20” for “10” and “in the following manner: The” for “by enclosing the”, added “shall be personally served or enclosed” after “: The notice”, and “or other person” after “addressed to the taxpayer” in the first sentence; deleted “also” after “The notice shall”, substituted “6063” for “6062”, added “in a newspaper of general circulation published” after “Government Code”, substituted “city” for “county” and “or a part thereof is situated . . . or a part thereof is located” for “seized is to be sold” in the second sentence; deleted the former third sentence which provided, “If there is no newspaper of general circulation in the county, the notice shall be posted in three public places in the county for the 10-day period.” and added the third sentence, including subdivisions (a) and (b); created a new paragraph with the former last sentence and added “due, including” after “amount” and “interest,” before “penalties”, and substituted “amount due is” for “taxes, penalties, and costs are”.

**43433. Bill of sale; deed.** At the sale the property shall be sold by the board, or by its authorized agent, in accordance with law and the notice, and the board shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the taxpayer.

**History.**—Stats. 1988, Ch. 652, in effect January 1, 1989, deleted “subject to a right of redemption as prescribed in the Code of Civil Procedure upon sales of real property on execution” in the second sentence.

**43434. Disposition of proceeds.** If upon the sale the moneys received exceed the amount of all taxes, penalties, and costs due the state from the taxpayer, the board shall return the excess to him or her and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest, the board shall withhold any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If for any reason the receipt of the taxpayer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the owner, subject to the order of the taxpayer, his or her heirs, successors, or assigns.

**History.**—Stats. 1996, Ch. 860, in effect January 1, 1997, substituted “to the excess moneys” for “thereto” after “the respective parties” in the second sentence and substituted “Controller” for “State Treasurer” after “moneys with the” in the last sentence.

## Article 5. Miscellaneous

- § 43441. Notice to creditors.
- § 43442. Credits; prohibition against transfer or disposal.
- § 43443. Credits; bank.
- § 43444. Credits; liability.
- § 43444.2. Notice of levy.
- § 43444.3. Employer withheld earnings.
- § 43445. Remedies; cumulative.
- § 43446. Remedies.
- § 43447. Furnishing of partnership agreement.
- § 43448. Installment payment agreement.
- § 43448.5. Installment payment agreement; annual statement.

**43441. Notice to creditors.** If any taxpayer is delinquent in the payment of any obligations imposed by this part, or in the event a

determination has been made against such a taxpayer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or within 10 years after the last recording of an abstract or copy of judgment under Section 43412 or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the taxpayer, or owing any debts to the taxpayer. In the case of any state officer, department, or agency, the notice shall be given to such officer, department, or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller.

**43442. Credits; prohibition against transfer or disposal.** After receiving the notice the person so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires first.

**43443. Credits; bank.** All persons so notified shall immediately, after receipt of the notice, advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried or at which the credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of the amount, interest, and penalty due from the person.

History.—Stats. 1982, Ch. 496, in effect July 12, 1982, substituted “immediately” for “forthwith” after “shall” in the first sentence, substituted “the” for “such” before “notice,” before the second “deposit,” and before the second “credits” in the second sentence, and deleted “two times” after “excess of” in the third sentence.

**43444. Credits; liability.** If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given, if solely by reason of such transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

*Text of section operative through June 30, 2001*

**43444.2. Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their

possession, or under their control, any payments, credits other than payments, or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1982. Stats. 1993, Ch. 1113, in effect January 1, 1994, added "(a)", added comma after "The board may", deleted a comma after "notice of levy", substituted "these" for "such" after "withhold from", substituted "the" for "such" after "due from", and substituted "the time" for "such times" after "board at", in the first paragraph; added "(b)"; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" and deleted "as" after "at the time" in the first sentence and added "The notice of . . . in subdivision (b)." as the second sentence to subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d).

*Text of section operative July 1, 2001*

43444.2. **Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

"such" after "withhold from", substituted "the" for "such" after "due from", and substituted "the time" for "such times" after "board at", in the first paragraph; added "(b)"; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" and deleted "as" after "at the time" in the first sentence and added "The notice of . . . in subdivision (b)," as the second sentence to subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted "paragraph (29) of subdivision (c) of Section 9102" for "Section 9105" after "as defined in" in subdivision (d).

**43444.3. Employer withheld earnings.** (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a feepayer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 43444.2 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

43445. **Remedies; cumulative.** The remedies of the state provided for in this chapter are cumulative, and no action taken by the board or Attorney General constitutes an election by the state or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

43446. **Remedies.** The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

(a) Whenever the person is insolvent.

(b) Whenever the person makes a voluntary assignment of his or her assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over a lien or security interest which was recorded or perfected prior to the time when the state records or files its lien as provided in Section 7171 of the Government Code.

The preference given to the state by this section is subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

43447. **Furnishing of partnership agreement.** The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

*History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.*

43448. **Installment payment agreement.** (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 43306.

*History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, added subdivision (e).*

**43448.5. Installment payment agreement; annual statement.** The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 43448 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

*History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.*

## CHAPTER 5. OVERPAYMENTS AND REFUNDS

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|------------|--------------------------------|-----------------|
| Article 1. | Claim for Refund.              | §§ 43451–43456. |
| 2.         | Suit for Refund.               | §§ 43471–43478. |
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### Article 1. Claim for Refund

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|------------|---|
| § 43451.   | Credits and refunds.  |
| § 43451.5. | Excess fee reimbursement.                                   |
| § 43452.   | Claim; limitation period.                                   |
| § 43452.1. | Claim limitation period; financially disabled.              |
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| § 43453.   | Failure to file claim.                                      |
| § 43454.   | Notice of action on claim.                                  |
| § 43455.   | Interest.   |
| § 43456.   | Disallowance of interest.                                   |

**43451. Credits and refunds.** If the board determines that any amount of tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board, certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty

thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

*History.*—Added by Stats. 1981, Ch. 756, effective September 25, 1981. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen” for “five” and “(\$15,000)” for “(\$5,000)” in the second paragraph. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” in the second paragraph. Stats. 1994, Ch. 726, in effect September 22, 1994, substituted “, shall certify” for “and shall certify to the State Board of Control” after “records of the board”; substituted “, and credit” for “. If approved by the State Board of Control,” after “by whom paid”; deleted “shall be credited” after “collected or paid”; added “Any proposed determination . . . of that determination.” as the second sentence; and deleted the second paragraph which said: “However, in the case of a determination by the board that an amount not to exceed fifty thousand dollars (\$50,000) was not required to be paid under this part, the board without obtaining the approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors.”

**43451.5. Excess fee reimbursement.** When an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fees or is in excess of the fees due, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

*History.*—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

**43452. Claim; limitation period.** (a) Except as provided in subdivisions (b), (e), and (f), no refund shall be approved by the board after three years from the date the taxes were due and payable for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 43201) of Chapter 3, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. Except as provided in subdivisions (e) and (f), no credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 43204.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 43204 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

(d) No claim for refund of taxes paid under this part shall be accepted, considered, or approved by the board if the claim is founded upon the grounds that the director has improperly or erroneously determined that any

substance is a hazardous or extremely hazardous waste. Any appeal of a determination that a substance is a hazardous or extremely hazardous waste shall be made to the director.

(e) Notwithstanding subdivision (a), the board may within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.5 of the Health and Safety Code, grant a refund or apply a credit pursuant to Section 43451 for any amount of tax, penalty, or interest that has been overpaid concerning a fee imposed pursuant to Section 25205.2 of the Health and Safety Code, if the taxpayer has paid or is being assessed a fee imposed pursuant to Section 25205.5 of the Health and Safety Code for the same period and site.

(f) Notwithstanding subdivision (a), the board may, within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.2 of the Health and Safety Code, grant a refund or apply a credit pursuant to Section 43451 for any amount of tax, penalty, or interest that has been overpaid concerning a fee imposed pursuant to Section 25205.5 of the Health and Safety Code, if the taxpayer has paid or is being assessed a fee imposed pursuant to Section 25205.2 of the Health and Safety Code for the same period and site.

(g) Any overpayment of the fee imposed by Section 25174.1 of the Health and Safety Code by a person submitting hazardous waste for disposal to a hazardous waste facility at which hazardous wastes are disposed who is required to collect the fee shall be credited or refunded by the state to the person who submitted the hazardous waste for disposal. However, if the facility has paid the amount to the board and establishes to the satisfaction of the board that it has not collected the amount from the person submitting the hazardous waste for disposal or has refunded the amount to that person, the overpayment may be credited or refunded by the state to the facility.

History.—Stats. 1982, Ch. 496, in effect July 12, 1982, substituted “last” for “15th” before “day”, deleted “Article 3 . . . 43350” before “of Chapter” and substituted “that” for “such” before the third “period” in the first sentence of, and substituted “that” for “such” before each “period” in the second sentence of, subdivision (a); and, substituted “shall” for “must” after “waste” in the second sentence of subdivision (d). Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “date the taxes were due and payable for” for “last day of the calendar month following the close of”, “after six months” for “within six months”, and “from the date the determinations” for “after the determinations” in first sentence. Stats. 1992, Ch. 852, in effect September 21, 1992, added “or after six months from the date of overpayments,” after “become final” in subsection (a). Stats. 1995, Ch. 630, in effect January 1, 1996, adds “(e) Notwithstanding subdivision . . . the same period and site”. Stats. 1998, Ch. 350 (SB 2231), in effect January 1, 1999, added subdivision (g).

**43452.1. Claim limitation period; financially disabled.** (a) The limitation period specified in Section 43452 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be

considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

*History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.*

**43452.2. Claim limitation period; overpayments from levies or liens.**

Notwithstanding Section 43452, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

*History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.*

**43453. Failure to file claim.** Failure to file a claim within the time prescribed in this article constitutes a waiver of all demands against the state on account of the overpayment.

**43454. Notice of action on claim.** Within 30 days after disallowing any claim, in whole or in part, the board shall serve written notice of its action on the claimant, such service to be made as provided by Section 43201.

**43455. Interest.** Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment was made. For the purposes of this section, "monthly period" means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the monthly period following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

*History.—Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . month" before "from" in the first paragraph. Stats. 1984, Ch. 1020, operative July 1, 1985, added "modified" before "adjusted", deleted "annual" before "rate", added "per month" before "established" and substituted "Section 6591.5" for "Section 19269". Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted "first day of . . . In addition, a" for "due date of the return for the period for which the overpayment was made, but no" after "from the" in the first paragraph. Stats. 1996, Ch. 320, in effect January 1, 1997, deleted "or the date upon which the claim is certified to the State Board of Control, whichever date is earlier" after "may be filed" in subdivision (a). Stats. 1997, Ch. 620 (SB 1102),*

in effect January 1, 1998, substituted "last day of the monthly period" for "15th day of the calendar month" after "refund, to the", added ", if he or she has not already filed a claim," after "which the claimant", and added "or the date . . . date is earlier" after "may be filed" in subdivision (a).

**43456. Disallowance of interest.** (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

**History.**—Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation "(a)" and added subdivision (b).

## Article 2. Suit for Refund

- § 43471. Enjoining collection forbidden.
- § 43472. Necessity of refund claim.
- § 43473. Action for refund.
- § 43474. When refund claim not acted upon.
- § 43475. Action for refund; limitation.
- § 43476. Disposition of amount of judgment.
- § 43477. Interest.
- § 43478. Judgment for assignee forbidden.

**43471. Enjoining collection forbidden.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any office of the state to prevent or enjoin the collection of any tax sought to be collected.

**43472. Necessity of refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

**43473. Action for refund.** Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

**43474. When refund claim not acted upon.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

**43475. Action for refund; limitation.** Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the state on account of any alleged overpayments.

**43476. Disposition of amount of judgment.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any taxes due from the plaintiff, and the balance shall be refunded to the plaintiff.

**43477. Interest.** In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

**History.**—Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . annum” before “upon.” Stats. 1984, Ch. 1020, operative July 1, 1985, added “modified” before “adjusted”, deleted “annual” before “rate”, added “per annum” before “established” and substituted “Section 6591.5” for “Section 19269.”

**43478. Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any tax paid when the action is brought by or in the name of an assignee of the taxpayer paying the tax or by any person other than the person who has paid the tax.

As used in this section, “assignee” does not include a person who has acquired the business of the taxpayer which gave rise to the taxes and who is thereby a successor in interest to the taxpayer.

**History.**—Stats. 1982, Ch. 496, in effect July 12, 1982, added the second paragraph.

### Article 3. Recovery of Erroneous Refunds

- § 43481. Recovery of erroneous refunds.
- § 43482. Place of trial.
- § 43483. Rules of procedure, etc.
- § 43484. Interest on erroneous refunds.

**43481. Recovery of erroneous refunds.** (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 43201) or Article 5 (commencing with Section 43350) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller’s warrant or date of credit.

**History.**—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision designation “(a)”, substituted “that” for “which” after “or part thereof” and deleted “, and the action shall be tried in the County of Sacramento unless the court with the consent of the Attorney General orders a change of place of trial. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings” after “State of California” in subdivision (a); and added subdivision (b).

**Note.**—SEC. 61. of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

**43482. Place of trial.** In any action brought pursuant to subdivision (a) of Section 43481, the court may, with the consent of the Attorney General, order a change in the place of trial.

**History.**—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

**43483. Rules of procedure, etc.** The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 43481, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

*History.—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.*

**43484. Interest on erroneous refunds.** (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 43481, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 43481 on or after January 1, 2000.

*History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.*

#### Article 4. Cancellations

§ 43491. Cancellation of determination.

**43491. Cancellation of determination.** If any amount has been illegally determined, either by the person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

*History.—Added by Stats. 1981, Ch. 756, effective September 25, 1981. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen” for “five” and “(\$15,000)” for “(\$5,000)” in the first sentence of the section, substituted “fifteen” for “five” and “(\$15,000)” for “(\$5,000)” in the last sentence of the section. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” in the first and third sentences. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted “in excess of fifty thousand dollars (\$50,000)” after “If any amount”; deleted “to the State Board of Control” after “board shall certify”; substituted “, and” for “. If the State Board of Control approves, it shall” after “determination was made”; and substituted “Any proposed determination . . . of that determination.” for “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined, either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board.”*

#### CHAPTER 6. ADMINISTRATION

- Article 1. Administration. §§ 43501–43506.  
2. The California Taxpayers’ Bill of Rights. §§ 43511–43527.

##### Article 1. Administration

- § 43501. Enforcement by board; rules and regulations.  
§ 43502. Examination of records.  
§ 43503. Employees and representatives of board.  
§ 43504. Certificate of notice.  
§ 43505. Disclosure of information.  
§ 43506. Report to Governor. [Repealed.]  
§ 43506. Information confidential; tax preparer.

**43501. Enforcement by board; rules and regulations.** The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part.

**43502. Examination of records.** The board may make such examinations of the books and records of any taxpayer as it may deem necessary in carrying out the provisions of this part.

**43503. Employees and representatives of board.** The board may employ accountants, auditors, investigators, and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

**43504. Certificate of notice.** A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

**43505. Disclosure of information.** Any information regarding hazardous wastes which is available to the board shall be made available to the department.

**43506. Report to Governor.** [Repealed by Stats. 1982, Ch. 496, in effect July 12, 1982.]

**43506. Information confidential; tax preparer.** (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 43151), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

Article 2. The California Taxpayers' Bill of Rights \*

- § 43511. Administration.
- § 43512. Taxpayers' Rights Advocate.
- § 43513. Education and information program.
- § 43514. Annual hearing for taxpayer proposals.
- § 43515. Preparation of statements by board.
- § 43516. Limit on revenue collected or assessed.
- § 43517. Evaluation of employee's contact with taxpayers.
- § 43518. Plan to timely resolve claims and petitions.
- § 43519. Procedures relating to review conferences.
- § 43520. Reimbursement to taxpayers.
- § 43521. Investigations for nontax administrative purposes.
- § 43522. Settlement of disputed tax liabilities. [Repealed.]
- § 43522. Settlement authority.
- § 43522.5. Offers in compromise.
- § 43523. Release of levy.
- § 43523.5. Return of property.
- § 43524. Exemptions from levy.
- § 43525. Claim for reimbursement of bank charges by taxpayers.
- § 43526. Preliminary notice to taxpayer prior to lien.
- § 43527. Disregard by board employee or officer.

43511. **Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

43512. **Taxpayers' Rights Advocate.** (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

43513. **Education and information program.** (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

\* Added by Stats. 1992, Ch. 438, in effect January 1, 1993.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance of inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “and compliance” after “program for audit” in paragraph (4) of subdivision (b).

**43514. Annual hearing for taxpayer proposals.** The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Hazardous Substances Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

**43515. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedure, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

**43516. Limit on revenue collected or assessed.** (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

**43517. Evaluation of employee’s contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee’s or officer’s performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers’ Rights Advocate.

**43518. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Toxic Substances Control Department of the California EPA, the Taxpayers’ Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall

include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

**43519. Procedures relating to review conferences.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

**43520. Reimbursement to taxpayers.** (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing” in paragraph (3) of, subdivision (a), substituted “board staff has . . . substantially justified” for “taxpayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, substituted “the notice of determination . . . claim for refund” for “filing petition for redetermination and claims for refund” of paragraph (1) of subdivision (c).

43521. **Investigations for nontax administrative purposes.** (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include hazardous substances tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

43522. **Settlement of disputed tax liabilities.** [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

43522. **Settlement authority.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute which arises under Section 105190 or 105310 of the Health and Safety Code.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the taxpayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session

or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 43651.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

History.—Stats. 1998, Ch. 350 (SB 2231), in effect January 1, 1999, substituted “105190 or 105310” for “372.7 or 429.14” after “arises under Section” in subparagraph (1) of subdivision (b). Stats. 2003, Ch. 605 (SB 1060), in effect January 1, 2004, added “, for at least one year,” after “placed on file” to subdivision (c). Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “Except as provided in paragraph (3) and subject” for “Subject” before “to paragraph (2)” in paragraph (1) of, added “, itself,” after “submitted to the board” in the first and third sentences of paragraph (2) of, and added paragraph (3) to subdivision (b); added “, or penalties, or total tax and penalties” after “a reduction of tax” in the first paragraph of, and substituted “For any settlement approved by the board, itself, the” for “The” before “Attorney General’s conclusion” in the first sentence of paragraph (5) of subdivision (c); added “, itself,” after “disapproved by the board” in the second sentence of paragraph (1) of subdivision (e); and added “considered or” after “any settlement” in the second sentence of subdivision (g).

**43522.5. Offers in compromise.** (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 22 (commencing with Section 43001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret,

or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 43651. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.

**43523. Release of levy.** (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys

received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” after “(commencing with Section 703.010)” and added “Part 2 of” after “Title 9 of” in subdivision (b). Stats. 1995, Ch. 555, in effect January 1, 1996, deleted “of any of the following” in subdivision (a). Added “issued pursuant to . . . of moneys received” to subsection (b) and relettered the remaining subparagraphs.

**43523.5. Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 43448 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 43525.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

**43524. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” after “(commencing with Section 703.010)” and added “Part 2 of” after “Title 9 of”.

**43525. Claim for reimbursement of bank charges by taxpayers.**

(a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the

board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

History.—Stats. 2001, Ch. 543 (SB 1185), added “and any other . . . check charge fees” after “of bank charges” in subdivision (a), added “and third party” prior to “charges include a” in subdivision (a), added “or third party’s” after “a financial institution’s” in subdivision (a), added “or third party” after “the financial institution” in subdivision (a), effective January 1, 2002.

**43526. Preliminary notice to taxpayer prior to lien.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 5 (commencing with Section 43350) of Chapter 3.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added subdivision (e).

**43527. Disregard by board employee or officer.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceedings, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

#### CHAPTER 7. DISPOSITION OF PROCEEDS

§ 43551.	Hazardous Waste Control Account.
§ 43552.	Hazardous Substance Account. [Repealed.]
§ 43552.	Toxic Substances Control Account.
§ 43553.	Occupational Lead Poisoning Prevention Account.
§ 43554.	Childhood Lead Poisoning Prevention Fund.
§ 43555.	Federal Receipts Account.

**43551. Hazardous Waste Control Account.** All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Sections 43051, 43053, and 43055, shall be paid to the board in the form of remittances payable to the State Board of Equalization of the

State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Hazardous Waste Control Account.

*History.*—Stats. 1988, Ch. 1376, in effect September 26, 1988, added “and 43053” after “43051” in the first sentence. Stats. 1989, Ch. 1032, in effect September 29, 1989, substituted “Section” for “Sections” and deleted “43051 and” after “Section” in the first sentence. Stats. 1990, Ch. 1267, in effect January 1, 1991, substituted “Sections” for “Section” in the first sentence; added “and 43055,” after “43053”. Stats. 1993, Ch. 1145, in effect January 1, 1994, added “43051,” after “to Sections” and added “, 43054,” after “43053”. Stats. 1998, Ch. 882 (SB 2240), in effect January 1, 1999, deleted “43054,” after “Sections 43051, 43053,” in the first sentence.

**43552. Hazardous Substance Account.** [Repealed by Stats. 1993, Ch. 1145, in effect January 1, 1994.]

**43552. Toxic Substances Control Account.** All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Section 43054 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer for deposit in the State Treasury to the credit of the Toxic Substances Control Account.

*History.*—Added by Stats. 1998, Ch. 882 (SB 2240), in effect January 1, 1999.

**43553. Occupational Lead Poisoning Prevention Account.** All taxes, interest, and penalties imposed on all amounts of tax required to be paid to the state pursuant to Section 43056 shall be paid to the board in the form of remittances payable to the State Board of Equalization. The board shall transmit the payments to the Treasurer to be deposited into the State Treasury to the credit of the Occupational Lead Poisoning Prevention Account.

*History.*—Added by Stats. 1991, Ch. 798, in effect January 1, 1992.

**43554. Childhood Lead Poisoning Prevention Fund.** All fees, interest, and penalties imposed and all amounts of fees required to be paid to the state pursuant to Section 43057 shall be paid to the board in the form of remittances payable to the Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Childhood Lead Poisoning Prevention Fund.

*History.*—Added by Stats. 1991, Ch. 799, in effect January 1, 1992.

**43555. Federal Receipts Account.** Notwithstanding Section 43551, all amounts required to be paid to the state pursuant to Section 43051, 43053, 43054, and 43055 by the United States and its agencies and instrumentalities shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payment to the Treasurer to be deposited into the State Treasury to the credit of the Federal Receipts Account, created pursuant to Section 25174.8 of the Health and Safety Code, and which may be expended by the department, upon appropriation by the Legislature, for those administrative purposes allowed by federal law.

*History.*—Added by Stats. 1993, Ch. 1145, in effect January 1, 1994. Stats. 1994, Ch. 1223, in effect January 1, 1995, substituted “created pursuant to Section 25174.8 of the Health and Safety Code,” for “which is hereby created as a subaccount of the Hazardous Waste Control Account,” in the second sentence.

CHAPTER 8. VIOLATIONS

- § 43601. Failure to file report. [Repealed.]
- § 43602. Failure to file return or report.
- § 43603. Filing false return; refusal to permit examination; failure to keep records.
- § 43604. Evasion of tax.
- § 43605. Violation of provisions for which a penalty is not specifically provided.
- § 43606. Felony violation of provisions for which a penalty is not specifically provided.
- § 43607. Statute of limitations.

43601. **Failure to file report.** [Repealed by Stats. 1982, Ch. 496, in effect July 12, 1982.]

43602. **Failure to file return or report.** Any person who refuses to furnish any return or report required to be made, or who refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor and subject to a fine in an amount not to exceed five hundred dollars (\$500) for each offense.

History.—Stats. 1982, Ch. 496, in effect July 12, 1982, deleted “fails or” before each “refuses” and added “or report” before “required.”

43603. **Filing false return; refusal to permit examination; failure to keep records.** Any person who knowingly or willfully files a false tax return with the board, and any person who refuses to permit the board or any of its representatives to make any inspection or examination for which provision is made in this part, or who fails to keep records as prescribed by the board, or who fails to preserve such records for the inspection of the board for such time as the board deems necessary, or who alters, cancels, or obliterates entries in such records for the purpose of falsifying the records is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

43604. **Evasion of tax.** Any person who willfully evades or attempts in any manner to evade or defeat the payment of the tax imposed by this part is guilty of a felony.

43605. **Violation of provisions for which a penalty is not specifically provided.** Every person convicted for a violation of any of the provisions of this part for which another penalty or punishment is not specifically provided for in this part is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

43606. **Felony violation of provisions for which a penalty is not specifically provided.** Every person convicted of a felony for a violation of any of the provisions of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than five thousand dollars (\$5,000), by imprisonment in the state prison, or by both that fine and imprisonment.

History.—Stats. 2006, Ch. 347 (AB 2367), in effect January 1, 2007, added a comma after “(\$5,000)” and deleted “or” after “(\$5,000)”, added “the” after “by imprisonment in”, added a comma after “state prison”, deleted “for not less than one year nor more than five years” after “imprisonment in the state prison”, and substituted “that” for “such” after “or by both”.

**43607. Statute of limitations.** Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense.

CHAPTER 9. DISCLOSURE OF INFORMATION \*

§ 43651. Disclosure of information.

**43651. Disclosure of information.** (a) The board shall provide any and all information obtained under this part to the department.

(b) The department and the board may utilize any information obtained pursuant to this part to develop data on the generation or disposal of hazardous or extremely hazardous waste within the state. Notwithstanding any other provision of this section, the department may make waste generation and disposal data available to the public.

(c) It shall be unlawful for the board, the department, or any person having an administrative duty under this part to make known, in any manner whatever, the business affairs, operations, or any other information pertaining to a taxpayer which was submitted to the board in a report or return required by this part, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not expressly authorized by subdivision (a) and this subdivision. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(d) Notwithstanding subdivision (c), the successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information regarding the determination of any unpaid tax or the amount of taxes, interest, or penalties required to be collected or assessed.

(e) Nothing in this section shall be construed as limiting or increasing the public's access to information on any aspect of hazardous or extremely hazardous waste generation or disposal collected pursuant to other state or local laws, regulations, or ordinances.

\* Chapter 9 was added by Stats. 1982, Ch. 496, in effect July 12, 1982. Stats. 1992, Ch. 852, in effect September 21, 1992, substituted “this part” for “Part 9 (commencing with Section 15600) of Division 3 of Title 2 of the Government Code” after “duty under” in subsection (c).

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